

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL J. SIMMS,

Petitioner,

v.

REED HOLTGEERTS,

Respondent.

No. C06-1255RSL

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the Court on petitioner's letter filed November 17, 2006 (Dkt. #9) noting his intention to appeal. The Court construes this letter as both a notice of appeal and a certificate of appealability under 28 U.S.C. § 2253. See Dkt. #10. Because petitioner filed his notice of appeal after April 24, 1996, his appeal is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which worked substantial changes to the law of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit issues a certificate of appealability identifying the particular issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

To obtain a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right, meaning that the petitioner must show that the resolution of the habeas petition is debatable among reasonable jurists or that the issues presented were "adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citing Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

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1 The Court's finding that the exhaustion remedy bars petitioner's claims is not debatable  
2 among reasonable jurists. See Dkt. #5 (Report & Recommendation); Dkt. #7 (Order Dismissing  
3 § 2254 Petition). Petitioner has, therefore, failed to make a substantial showing of the denial of  
4 a constitutional right and is not entitled to a certificate of appealability under 28 U.S.C. § 2253.

5 For all of the foregoing reasons, petitioner's motion for a certificate of appealability (Dkt.  
6 #9) is DENIED.

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8 DATED this 13th day of December, 2006.

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11 Robert S. Lasnik  
12 United States District Judge  
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